Service Date: March 10, 1981

DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

In the Matter of the Petition of MONTANA-DAKOTA UTILITIES COMPANY for Authorization to Enter into a Transaction for the Purpose of Financing the Acquisition and Storage of Natural Gas	)	UTILITY DIVISION DOCKET NO. 80. 9 .74 ORDER NO 4753

APPEARANCES

FOR THE APPLICANT:

Joseph R. Maichel, Attorney, Montana-Dakota Utilities Company, 400 North 4th Street, Bismarck, North Dakota 58501

Mr. John Alke, Attorney, Hughes, Bennett, Kellner and Sullivan, PO . Box 1166, Helena, MT. 59624

FOR THE PROTESTANTS:

James C . Paine, Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59690

Frank Buckley, Utilities Analyst, Montana Consumer Counsel, 34 West Sixth Avenue, Helena, Montana 59601

C.W . Leaphart, Attorney, Great Western Sugar Company, 1 North Last Chance Gulch, Helena, Montana 59631

Jerome Anderson, Attorney, Lovely Clay Products Company, Pierce Packing Company, Midland Packing Company and Midland Foods, 404 North 31st Street Billings, Montana 59101

FOR THE COMMISSION

Robert F. W. Smith, Staff Attorney
Larry Finch, Economist, Utility Division
Dan Elliott, Administrator, Utility Division

BEFORE:

GORDON E. BOLLINGER, Chairman
CLYDE JARVIS, Commissioner
THOMAS J. SCHNEIDER, Commissioner

FINDINGS OF FACT

1. On September 26, 1980, Montana-Dakota Utilities Company (Petitioner) filed with the Montana Public Service Commission (Commission) a petition seeking authority to enter into a transaction for the purpose of financing the acquisition and storage of natural gas

2. The Petitioner proposes to enter into said transaction with the Frontier Gas Storage Company, a California Corporation (Corporation) created expressly for the purpose of financing the acquisition of storage

3. The transaction is to be effectuated via a Natural Gas Sale for Storage Agreement, a Natural Gas Storage Agreement and a Storage Gas Sell back Agreement. Through the Natural Gas Sale for Storage Agreement, the Corporation will purchase from the Petitioner those volumes of gas placed into storage during the period January 1, 1979 through the date on which the transaction is initiated at a price equal to the original cost of gas. Thereafter, the Corporation will purchase from the Petitioner all

volumes of gas nominated for sale that are in excess of current market demands.

Because the gas never leaves the possession of the Petitioner, the Petitioner will charge the Corporation a monthly storage fee in accordance with the Natural Gas Storage Agreement.

Under the Storage Gas Sell back Agreement the Corporation will charge the Petitioner a monthly charge for interest expenses, storage costs and administrative and general expenses. In addition, in those months in which the Petitioner purchases gas from the Corporation to meet demand in excess of its flowing supply, the-Petitioner will be charged a charge based on the original cost of gas paid by the Corporation and in accordance with the LIFO inventory method.

4. All sales and charges associated with the above three agreements are pursuant to Federal Energy, Regulatory Commission (FERC) tariffs. These tariffs provide no profit to the Corporation

5. To finance the purchase of gas from the Petitioner, the Corporation will issue commercial paper notes (Notes) supported by an irrevocable letter of credit- (Letter of Credit) from Security Pacific National Bank (Credit Bank) to Marine Midland Bank (Depository), who will act as Depository, for the transaction. Under a Credit Agreement (Credit Agreement) between the Credit Bank and the Corporation, the Corporation is to receive a Revolving Credit Account not to exceed $100,000,000 (Commitment); the Credit Bank, in return, receives a security interest (Security and Assignment Agreement) in all of the Corporation's gas, property, investments and other assets. Should the Corporation be unable to retire the Notes as they come

due, the Credit Bank will deposit the necessary funds required for retirement in the Depository and debit the Corporation's Revolving Credit Account for a like amount.

6. The cost of issuing commercial paper will be the current commercial paper rate as determined in the market. The Revolving Credit Loans will bear interest at one hundred five percent (105%) of the Base Rate. The Base Rate is defined as the greater of the Prime Rate or the Commercial Paper Rate, as such rates may change from time to time.

7. The Termination Date (Termination Date) of the Credit Agreement shall be the earlier of (I) November 30, 1985 or November 30th of any later year, provided that at least three years prior to such November 30th the Credit Bank or the Corporation shall have given notice of desire to terminate or (ii) November 30, 1995 or (iii) the date of notice of an Event of Default as defined in the Credit Agreement.

8. The Corporation is obligated to purchase all quantities of gas nominated for sale by the Petitioner and to sell to no party other than the Petitioner. The Sellback Agreement unconditionally obligates the Petitioner to repurchase all natural gas nominated for sale to it by the Corporation.

9. Pursuant to a Consent and Agreement- (Consent and Agreement) entered into between the Petitioner and the Credit Bank, if the Credit Bank (I) shall have demanded payment of any amount due under the Credit Agreement and shall not have been paid and (ii) shall have accelerated the Termination Date and such Termination Date shall have occurred, then the Petitioner will pay directly

to the Credit Bank an amount equal to the amount due from the Corporation and not paid.

10. The Federal Energy Regulatory Commission has held that this type of agreement constitutes a guarantee within the meaning of Section 204 of the Federal Power Act (ESSO-50, Consumer Power Company, May 21, 1980).

11. The transaction, prior to implementation, must also be authorized within the jurisdictions of the FERC and the Wyoming Public Service Commission. Such authorizations have been granted.
12. The Commission recognizes the potential for savings that arises because of the preferential tax treatment given to interest expense; however, the Commission, in granting authority for the Petitioner to enter into the transaction, does not do so without substantial reservations. Of significant concern are the implications of the transaction on the attitudes and perspectives of the Petitioner's bondholders.

In that the FERC has found the Consent and Agreement to constitute a guarantee by the Petitioner to cover the obligations of the Corporation in case of default on the part of the Corporation (see Findings of Fact 9 and 10), the extent to which an additional degree of financial risk is imputed to the Petitioner becomes unclear. Although the transaction is not represented on the balance sheet of the Petitioner, it is nevertheless footnoted within the context of the Petitioner's financial statements. To the extent that the Petitioner's bondholders should perceive the transaction as adding additional financial risk to the Petitioner's operations, thereby requiring the concomitant increase in return, the transaction becomes less attractive.

13. In light of the foregoing discussion, the Commission reserves the right to monitor the progression of circumstances and events surrounding the transaction, and further reserves the right to initiate proceedings designed to accelerate the termination of the transaction should it be determined that the transaction in any way becomes unwieldy in regard to the welfare of the consumer, when Petitioner has not assumed similar action of its own accord.

In order to monitor the effects of the transaction MDU will be required to file with the Montana Public Service Commission annual report on the Frontier project. The pertinent information to be filed in the report will be specified at a later date. The report will be filed no later than February 15th for the calendar year preceding for any year or portion of a year in which the Frontier project is in effect.

CONCLUSIONS OF LAW

1. Pursuant to Part 5, Chapter 3, Title 69, Montana Code Annotated, the Montana Public Service Commission properly exercises jurisdiction over the parties and subject matter in this Docket.

2. Pursuant to Section 2-4-601, MCA, the Commission afforded all interested parties notice and an opportunity to participate in this matter.

3. From the information available at this time the Commission

concludes, pursuant to Section 69-3-504, MCA, that:

1) This transaction is consistent with the public interest;
2) This transaction is for a lawful purpose as defined by Section 69-3-501(2), M CA; and

3) The aggregate amount of securities outstanding and proposed to be outstanding will not exceed the fair value of the properties and business of the Petitioner.

However, due to the reservations expressed in Finding of Fact No. 12, if at some point the Commission determines that this transaction is not in the public interest, the proceedings outlined in Finding of Fact No. 13 may be instituted.

ORDER

1. Montana-Dakota Utilities Company is hereby authorized to enter into a transaction for the purpose of financing the acquisition and storage of natural gas which transaction is described in Sections D and E (specifically excluding the last two paragraphs of Section E) of the application filed by Petitioner with the Federal Energy Regulatory Commission, which sections of such application were made part of the application to this Commission.

2. No provision herein contained shall be construed to obligate the State of Montana to pay or guarantee in any manner whatsoever any security authorized, issued, assumed or guaranteed pursuant to this order.

3. All motions and objections not ruled upon at the hearing are

hereby denied.

Done and Dated this 9th day of March, 1981, by a vote of 5 - 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

ATTEST:

Madeline L. Cottrill
Secretary

GORDON E. BOLLINGER, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

CLYDE JARVIS, Commissioner

THOMAS J. SCHNEIDER, Commissioner

(SEAL)

NOTE: You may be entitled to judicial review of the final decision in this matter. If no Motion for Reconsideration is filed, judicial review may be obtained by filing a petition for review within thirty (30) days from the service of this order. If a Motion for Reconsideration is filed, a Commission order is final for purpose of appeal upon the entry of a ruling on that motion, or upon the passage often (10) days following the filing of that motion. cf. the Montana Administrative Procedure Act, esp. Sec. 2-4-702, MCA; and Commission Rules of Practice and Procedure, esp 38.2.4806,ARM.